



Thomas R. Miller To Retire

Thomas R. Miller, Legal Counsel, Director, and Special Deputy Attorney General, will retire effective March 1, 2012, after 30 years of service to the Commission.



Miller joined the "Real Estate Licensing Board" as Legal Information Officer on March 1, 1982, and was subsequently employed by the Attorney General's Office as Legal Counsel for the Board on January 2, 1985.

A native of Durham, North Carolina, Miller graduated from Davidson (See **Miller**, page 9)

Changes to Rules Effective January 1

Following is a summary of Real Estate Commission rule changes which became effective January 1, 2012.

General Brokerage

Trust Accounting

- Clarifies that a broker may hold and transmit a check for a due-diligence fee in the same manner as an option fee.
- Clarifies that properly documented electronic deposits into and disbursements from a broker's trust account are permissible.

Residential Property Disclosure Form

- Provides for a revised residential property disclosure form containing new disclosures required for properties governed by owners' associations and more specific instructions concerning the type of residential properties for which the form is required. (See related story page 4-5.)

(See **Rules**, page 9)

Commission Implements Major Changes To Real Estate Licensing Examination

The North Carolina Real Estate Commission is implementing major changes to the real estate license examination program on **March 1, 2012**. To understand these changes, however, one must first recall how the current examination program works.

The license examination that applicants must pass to initially obtain a real estate broker license (on provisional status) has consisted for many years of a one-part comprehensive examination with 110 scored questions and a 75% passing score. This one-part examination approach has been followed by the Commission since it assumed full responsibility in 1984 for developing and maintaining its own examination "in-house." Initially the Commission also actually administered the examination, but since 2000, the examination has been administered for the Commission on computer by PSI Examination Services, Inc. Also since 2000, North Carolina has had a single entry-level license examination, with no separate examination for an advanced-level bro-

ker license status. North Carolina's approach contrasts with the system followed by a majority of states whereby the state licensing agency contracts with a testing company to provide a two-part examination consisting of a "national" section on general real estate laws, principles and practices and a "state" section on state-specific laws and practices.

While the Commission has been quite satisfied with its "in-house" examination, the Commission determined that the current high quality and standards of the examination program could best be maintained by enlisting the assistance of a testing company to do more than just administer the examination. Moreover, the Commission determined that the two-part examina- (See **Examination**, page 3)

Licensing Reciprocity Ends February 29; Replaced with New Exam Requirements

Current reciprocal licensing arrangements between North Carolina and all other states with which such arrangements are currently in place will end February 29, 2012. Those reciprocal states are: Arkansas, Connecticut, Georgia, Iowa, Louisiana, Mississippi, Nebraska, South Carolina, Tennessee and West Virginia.

The current approach to reciprocal licensing arrangements allows resident licensees of one reciprocal state to obtain a license in another reciprocal state without taking any prelicensing education or license examination. Thus, applicants for a North Carolina license by reciprocity currently do not have to

demonstrate any knowledge of North Carolina real estate laws and practices. Also, applicants for a North Carolina license by reciprocity presently must be a resident of the reciprocal state or must not have resided in North Carolina for more than 90 days before applying for a reciprocal license.

New Approach

Beginning March 1, 2012, any person applying for a license in North Carolina based on current licensure in another state, U.S. territory or possession or a Canadian province, regardless of their place of residency, will not have to take the

(See **Reciprocity**, page 6)

REAL ESTATE BULLETIN

Published as a service to real estate licensees to promote a better understanding of the Real Estate License Law and Commission rules, and proficiency in real estate practice. The articles published herein shall not be reprinted or reproduced in any other publication without specific reference being made to their original publication in the Commission's Real Estate Bulletin.

NORTH CAROLINA REAL ESTATE COMMISSION

1313 Navaho Drive
P. O. Box 17100
Raleigh, North Carolina 27619-7100
Phone (919) 875-3700
www.ncrec.gov

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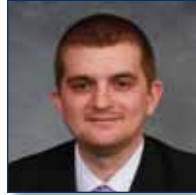
Editor-In-Chief
Miriam J. Baer

Editor
Robert L. Forshaw



People

Jake A. Gore has been employed as Network Administrator in the Administration Division. He is a graduate of East Carolina University with a BS degree in Management Information Systems and is also Cisco certified. Most recently, he was a Network Engineer for a network solutions provider specializing in student housing and apartment complexes.



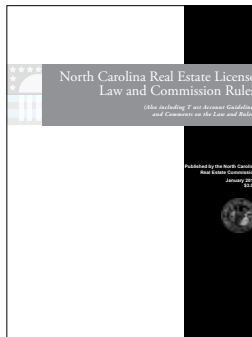
Appearances

Miriam J. Baer, Executive Director, spoke to Fayetteville Association of REALTORS® property managers and then to the Association's general membership.

Pamela M. Vesper, Senior Auditor/Investigator, spoke to the Charlotte chapter of the National Association of Residential Property Managers,

Peter B. Myers, Legal Information Officer, spoke to the Lumberton Board of REALTORS®.

Law, Commission Rules Book Available



An updated and expanded edition of the North Carolina Real Estate License Law and Commission Rules booklet is being published.

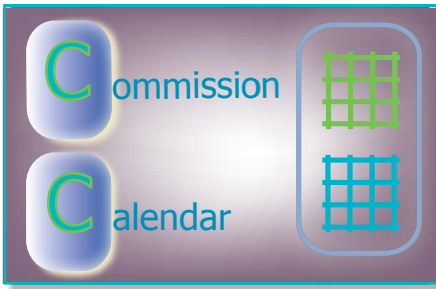
The printed booklet contains the Real Estate License Law, Commission Rules, Trust Account Guidelines, and the Commentary on the Law and Rules (a study guide for the licensing test) and is a convenient portable reference source.

Each of the booklet's four sections is also published as an individual PDF file on the Law/Rules page of the Commission's Web site, www.ncrec.gov.

The Law section has been expanded with the inclusion of Article 3 of the Real Estate License Law covering Private Real Estate Schools. Articles 1 (Real Estate Brokers), 2 (Real Estate Recovery Fund), and 4 (Time Shares) are already included.

The Rules section with Subchapters 58A (Real Estate Brokers) and 58B (Time Shares) has been expanded to include Subchapters 58C (Real Estate Prelicensing Education), 58E (Real Estate Continuing Education) and 58G (Real Estate Commission Administration).

The booklet may be ordered at \$3 per copy using the publications order form in this issue of the Bulletin or the online or mail-in order forms on the Publications page of the Commission's Web site.



March 7
North Raleigh Hilton
April 4
May 9
Wallace
June 13

All meetings, unless otherwise noted, begin at 9 a.m. and are held in Raleigh in the Commission's Conference Room at 1313 Navaho Drive (27609). Occasionally, circumstances necessitate changes in meeting times and locations.

Examination

(Continued from page 1)

tion approach followed by most other states would have the additional benefit of enabling the Commission to require persons applying based on licensure in another jurisdiction to pass the "State" section of the license examination, thereby providing some assurance that such applicants possess a good basic knowledge of North Carolina real estate laws and practices.

Consequently, the Commission went through a procurement process in 2011 to select a testing company to assist in developing and administering a two-part examination program. Following a thorough selection process, the

Commission contracted with Applied Measurement Professionals, Inc. (AMP) of Lenexa, KS to handle its examination program.

The "New" Examination

Beginning March 1, 2012, the license examination will be a two-part examination consisting of (1) a "national" section of 100 scored questions on general real estate laws, principles and practices and (2) a "state" section of 40 scored questions on primarily North Carolina laws and practices. The "national" section is AMP's national salesperson (entry-level) examination administered in 11 other states, while the "state" section is developed by and will be maintained entirely by the Commission. The passing score for each section is

75%. Most applicants must pass both sections of the examination; however, persons applying based on licensure in another jurisdiction will be required to pass only the "state" section of the examination. [See article on "License Reciprocity Changes" on page 1 of this Bulletin.]

Approved schools and instructors have been aware of the impending changes for several months and the Commission is working closely with them to assure they have the information necessary to properly prepare their students for the new examination.

COURSE SCHEDULES

This schedule provides locations, dates, and times for the courses indicated through June, 2012. Register online at the Commission's Web site, www.ncrec.gov, under Course Registration.

Broker-in-Charge Course

Two-days. Day one, 1-5 p.m.; Day two, 8:30-5:30 p.m.

Asheville	March 5-6 May 15-16	Holiday Inn East/Blue Ridge Parkway
Banner Elk*	April 17-18	Best Western Mountain Lodge
Concord	February 20-21 April 10-11 May 21-22	Hilton Garden Inn, Concord
Greensboro	March 20-21 June 4-5	Clarion Hotel
Nags Head*	March 12-13	Ramada Plaza Resort
Raleigh	February 29-March 1 April 24-25 June 6-7	McKimmon Conference Center
Wilmington	May 7-8	Coastline Convention Center

Basic Trust Account Procedures Course

Asheville	May 16, 9 a.m. - 1 p.m.	Holiday Inn East/Blue Ridge Parkway
Charlotte	April 11, 9 a.m. - 1 p.m.	Hilton Garden Inn, Concord
Raleigh	March 1, 1 - 5 p.m. June 5, 1 - 5 p.m.	McKimmon Conference Center

See Commission Web site to confirm courses.

*Banner Elk and Nags Head may be cancelled if less than 12 people pre-register.

Property Disclosure Form Revised as of January 1 To Include Properties Governed by Owners' Associations

By Curtis E. Aldendifer, Associate Legal Counsel

As mandated by legislation effective January 1, 2012, owners of residential real estate are now required (with certain statutory exceptions) to furnish purchasers with a revised Residential Property Disclosure Statement. The Statement is set forth in the recently amended Rule A.0114 and available on the Commission's Web site, www.ncrec.gov.

Now four pages in length and titled "Residential Property and Owners' Association Disclosure Statement," the revised form includes additional disclosures that apply when a property is governed by an owners' association or system of mandatory covenants.

The instructions and questions 1 through 20 of the revised form remain essentially unchanged except for the addition of language in the instructions clarifying that disclosure requirements

apply to sellers of condominiums, townhouses, and similar residences in the same way it applies to sellers of single-family detached residences.

The new disclosures, beginning with question 21 page 3, pertain to properties governed by an owners' association.

Question 21 asks whether the property is "subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments or dues and special assess-

ments."

The available responses to question 21 are "yes", "no", and "no representation", indicated by marking the appropriate box adjacent to the question. If the seller responds "no" or "no representation", then the remaining questions need not be answered. However, if the seller responds "yes", then the remaining questions, 22 through 25, must be completed.

Question 22 asks for the name of the governing owners' association, the amount of dues or assessments and the
(See Reciprocity, page 6)

The revised form on these pages bears a new name - Residential Property and Owners' Association Disclosure Form. It remains largely unchanged until question 21 where disclosure pertaining to properties governed by an owners' association or other controlling entity is required. Owners and purchasers sign on page one and initial on pages 2-4. The complete form is available on the Commission's Web site and may be downloaded and printed as needed.



STATE OF NORTH CAROLINA
RESIDENTIAL PROPERTY AND
OWNERS' ASSOCIATION DISCLOSURE STATEMENT

Instructions to Property Owners

- G.S. 47E requires owners of residential real estate (single-family homes, individual condominiums, townhouses, and the like, and buildings with up to four dwelling units) to furnish purchasers a Residential Property and Owners' Association Disclosure Statement ("Disclosure Statement"). This form is the only one approved for this purpose. A disclosure statement must be furnished in connection with the sale, exchange, option and sale under a lease with option to purchase (unless the tenant is already occupying or intends to occupy the dwelling). A disclosure statement is not required for some transactions, including the first sale of a dwelling which has never been inhabited and transactions of residential property made pursuant to a lease with option to purchase where the lessee occupies or intends to occupy the dwelling. For a complete list of exemptions, see G.S. 47E-2.
- You must respond to each of the questions on the following pages of this form by filling in the requested information or by placing a check in the appropriate box.
 - If you check "Yes" for any question, you must explain your answer and either describe any problem or attach a report from an engineer, contractor, pest control operator or other expert or public agency describing it. If you attach a report, you will not be liable for any inaccurate or incomplete information contained in it so long as you were not grossly negligent in obtaining or transmitting the information.
 - If you check "No", you are stating that you have no actual knowledge of any problem. If you check "No" and you know there is a problem, you may be liable for making an intentional misstatement.
 - If you check "No Representation", you have no duty to disclose the conditions or characteristics of the property, even if you should have known of them.
 - If you check "Yes" or "No" and something happens to the property to make your Disclosure Statement incorrect or inaccurate (for example, the roof begins to leak), you must promptly give the purchaser a corrected Disclosure Statement or correct the problem.
- If you are assisted in the sale of your property by a licensed real estate broker, you are still responsible for completing and delivering the Statement to the purchaser; and the broker must disclose any material facts about your property which they know or reasonably should know, regardless of your responses on the Statement.
- You must give the completed Disclosure Statement to the purchaser no later than the time the purchaser makes an offer to purchase your property. If you do not, the purchaser can, under certain conditions, cancel any resulting contract (See "Note to Purchasers" below). You should give the purchaser a copy of the Disclosure Statement containing your signature and keep a copy signed by the purchaser for your records.

Note to Purchasers: If the owner does not give you a Residential Property Disclosure Statement by the time you make your offer to purchase the property, you may under certain conditions cancel any resulting contract and be entitled to a refund of any deposit monies you may have paid. To cancel the contract, you must personally deliver or mail written notice of your decision to cancel to the owner or the owner's agent within three calendar days following your receipt of the Statement, or three calendar days following the date of the contract, whichever occurs first. However, in no event does the Disclosure Act permit you to cancel a contract after settlement of the transaction or (in the case of a sale or exchange) after you have occupied the property, whichever occurs first.

- In the space below, type or print in ink the address of the property (sufficient to identify it) and your name. Then sign and date.

Property Address: _____

Owner's Name(s): _____

Owner(s) acknowledge having examined this Disclosure Statement before signing and that all information is true and correct as of the date signed.

Owner Signature: _____ Date: _____

Owner Signature: _____ Date: _____

Purchaser(s) acknowledge receipt of a copy of this Disclosure Statement; that they have examined it before signing; that they understand that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections they may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain their own inspection from a licensed home inspector or other professional.

Purchaser Signature: _____ Date: _____

Purchaser Signature: _____ Date: _____

Property Address/Description: _____

Regarding the property identified above, including the dwelling unit(s) and lot to be conveyed, and not sheds, detached garages or other buildings, to your knowledge is there any problem (malfunction or defect) with any of the following:

- | | Yes* | No | No Representation |
|--|--------------------------|--------------------------|--------------------------|
| 1. FOUNDATION, SLAB, FIREPLACES/CHIMNEYS, FLOORS, WINDOWS (INCLUDING STORM WINDOWS AND SCREENS), DOORS, CEILING, INTERIOR AND EXTERIOR WALLS, ATTACHED GARAGE, PATIO, DECK OR OTHER STRUCTURAL COMPONENTS including any modifications to them?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Siding is: <input type="checkbox"/> Masonry <input type="checkbox"/> Wood <input type="checkbox"/> Composition/Hardboard <input type="checkbox"/> Vinyl <input type="checkbox"/> Synthetic Stucco <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Approximate age of structure?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. ROOF (leakage or other problem)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Approximate age of roof covering?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. WATER SEEPAGE, LEAKAGE, DAMPNES OR STANDING WATER in the basement, crawl space or slab?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. ELECTRICAL SYSTEM (outlets, wiring, panel, switches, fixtures etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. PLUMBING SYSTEM (pipes, fixtures, water heater, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. HEATING AND/OR AIR CONDITIONING?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Heat Source is: <input type="checkbox"/> Furnace <input type="checkbox"/> Heat Pump <input type="checkbox"/> Baseboard <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Cooling Source is: <input type="checkbox"/> Central Forced Air <input type="checkbox"/> Wall/Window Unit(s) <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Fuel Source is: <input type="checkbox"/> Electricity <input type="checkbox"/> Natural Gas <input type="checkbox"/> Propane <input type="checkbox"/> Oil <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. WATER SUPPLY (including water quality, quantity and water pressure)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Water supply is: <input type="checkbox"/> City/County <input type="checkbox"/> Community System <input type="checkbox"/> Private Well <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Water pipes are: <input type="checkbox"/> Copper <input type="checkbox"/> Galvanized <input type="checkbox"/> Plastic <input type="checkbox"/> Other..... <input type="checkbox"/> Unknown..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. SEWER AND/OR SEPTIC SYSTEM?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| a. Sewage disposal system is: <input type="checkbox"/> Septic Tank <input type="checkbox"/> Septic Tank with Pump <input type="checkbox"/> Community System <input type="checkbox"/> Connected to City/County System <input type="checkbox"/> City/County System available <input type="checkbox"/> Straight pipe (wastewater does not go into a septic or other sewer system (note: use of this type of system violates state law)) <input type="checkbox"/> Other..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 9. BUILT-IN APPLIANCES (RANGE/OVEN, ATTACHED MICROWAVE, HOOD/FAN, DISHWASHER, DISPOSAL, etc.)?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 10. PRESENT INFESTATION, OR DAMAGE FROM PAST INFESTATION OF WOOD DESTROYING INSECTS OR ORGANISMS which has not been repaired?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 11. DRAINAGE, GRADING OR SOIL STABILITY OF LOT?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 12. OTHER SYSTEMS AND FIXTURES: CENTRAL VACUUM, POOL, HOT TUB, SPA, ATIC FAN, EXHAUST FAN, CEILING FAN, SUMP PUMP, IRRIGATION SYSTEM, TV CABLE WIRING OR SATELLITE DISH, OR OTHER SYSTEMS?..... | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Owner(s) Initials and Date

Purchaser(s) Initials and Date

Disclosure

(Continued from page 4)

period of time covered by each payment, and the contact information for the president of the owners' association or the association manager. The seller may respond with "N/A" to any of the information requested by question 22 that does not apply to the property.

Question 23 is framed as a declaration that, as of the date the disclosure statement is signed, there are no dues, fees, or special assessments that have been approved as required by the applicable declaration or bylaws and are payable to the owners' association to which the lot is subject except for those identified by the seller in the space provided. The seller should list any duly approved dues, fees, or assessments that remain payable to the governing association, and should include any fees charged by the association or management company in connection with the transfer of title to the new owner.

Question 24, also framed as a dec-

laration, states that, as of the date the disclosure statement is signed, there are no unsatisfied judgments against or pending lawsuits involving either the property or lot to be conveyed or the planned community or association to which the property and lot are subject, except those identified by the seller in the space provided. The disclosure is not intended to include any action filed by the association for the collection of delinquent assessments on lots other than the lot for sale.

The last question, number 25, addresses the disclosure of any services and amenities that are paid out of the association's regular assessments or dues and includes a list of typical services and amenities. Additional space is provided in which the seller can disclose any other services or amenities not addressed in the list paid for by association dues, or provide any additional information or explanation necessary to a full and complete disclosure.

Once completed, the disclosure form should be signed and initialed in

the appropriate places and made available to all prospective purchasers.

A good broker will assist his or her owner-clients with obtaining the information necessary to complete the owners' association disclosures. In some instances, owners' associations and association managers will be restricted in how and to whom they furnish certain information. In order to avoid unnecessary delay in obtaining the information needed to complete the disclosure form, brokers should be aware of the association's policies and procedures prior to requesting information needed for the disclosure statement.



Also regarding the property identified above, including the lot, other improvements, and fixtures located thereon, do you have any

- 13. ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES?
- 14. ENVIRONMENTAL HAZARDS (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?
- 15. COMMERCIAL, INDUSTRIAL, OR MILITARY NOISE, ODOR, SMOKE, ETC. AFFECTING THE PROPERTY?
- 16. VIOLATIONS OF ZONING ORDINANCES, RESTRICTIVE COVENANTS OR OTHER LAND-USE RESTRICTIONS, OR BUILDING CODES INCLUDING THE FAILURE TO OBTAIN PROPER PERMITS FOR ROOM ADDITIONS OR OTHER STRUCTURAL CHANGES?
- 17. UTILITY OR OTHER EASEMENTS, SHARED DRIVEWAYS, PARTY WALLS OR ENCROACHMENTS FROM OR ON ADJACENT PROPERTY?
- 18. LAWSUITS, FORECLOSURES, BANKRUPTCY, TENANCIES, JUDGMENTS, TAX LIENS, PROPOSED ASSESSMENTS, MECHANICS' LIENS, MATERIALMENS' LIENS, OR NOTICE FROM ANY GOVERNMENTAL AGENCY that could affect title to the property?
- 19. FLOOD HAZARD or that the property is in a FEDERALLY-DESIGNATED FLOODPLAIN?
- 20. PRIVATE ROAD(S) OR STREET(S) adjoining the property?
 - a. If yes, do you know of an existing owners' association or maintenance agreement to maintain the road or street?

* If you answered "Yes" to any of the above questions, please explain (Attach additional sheets, if necessary):

In lieu of providing a written explanation, you may attach a written report to this Disclosure Statement by a public agency, engineer, land surveyor, geologist, pest control operator, contractor, home inspector or other expert, dealing with matters within the scope of that public agency's functions or the expert's license or expertise.

Also regarding the property identified above, including the dwelling unit(s), any sheds, detached garages, other buildings or the lot to be conveyed, answer each of the questions below based on your actual knowledge:

- 21. Is the property subject to regulation by one or more owners' association(s) and governing documents which impose various mandatory covenants, conditions, and restrictions upon the lot, including, but not limited to obligations to pay regular assessments or dues and special assessments?

*If you answered "No" or "No Representations" to question 21 above, you do not need to answer the remaining questions on this Disclosure Statement. If you answered "Yes" to question 21 above, you must complete the remainder of this Disclosure Statement.

22. The property is subject to the following owners' association(s) [insert N/A into any blank that does not apply]: (specify name), _____ per _____ The name, address, and telephone number of the president of the owners' association or the association manager are:

 (specify name) _____ whose regular assessments ("dues") are \$ _____ per _____ The name, address, and telephone number of the president of the owners' association or the association manager are: _____

23. As of the date this Disclosure Statement is signed, there are no other dues, fees, or special assessments which have been duly approved as required by the applicable declaration or bylaws, payable to an association to which the lot is subject, except:

Owner(s) Initials and Date _____ Purchaser(s) Initials and Date _____

24. As of the date this Disclosure Statement is signed, there are no unsatisfied judgments against or pending lawsuits involving the property or lot to be conveyed, the planned community or the association to which the property and lot are subject, with the exception of any action filed by the association for the collection of delinquent assessments on lots other than the property and lot to be conveyed, except:

25. The following services and amenities are paid for by the above owners' association(s) from the regular assessments ("dues"): (Check all that apply).

	Yes	No	No Representation
Management Fees	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Building Maintenance of Property to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exterior Yard/Landscaping Maintenance of Lot to be Conveyed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Common Areas Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Trash Removal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Recreational Amenity Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pest Treatment/Extermination	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Street Lights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Water	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sewer	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stormwater Management/Drainage/Ponds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internet Service	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cable	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Private Road Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Parking Area Maintenance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gate and/or Security	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other (specify) _____

Owner(s) Initials and Date _____ Purchaser(s) Initials and Date _____

Reciprocity

(Continued from page 1)

North Carolina prelicensing course or the "National" section of the North Carolina license examination; however, all such applicants will have to pass the "State" section of the North Carolina license examination.

This new approach might be described as a "limited license recognition" approach – it recognizes completion of prelicensing education and passing the "National" section of a license examination in another jurisdiction, but does not fully exempt the entire North Carolina license examination requirement. By requiring the applicant to pass the "State" section of the North Carolina license examination, the new approach provides some assurance that the applicant has a basic knowledge of North Carolina real estate laws and practices.

Additionally, rather than North Carolina having full license reciprocity with only a small number of states, (currently 10), the new approach allows licensees of any other state, U.S. territory or possession or Canadian province to obtain a North Carolina license by passing only the "State" section of the license examination. Moreover, the place of residence of the applicant is not an issue under this approach.

Beginning March 1, 2012, persons licensed in another jurisdiction must pass the "State" section of the North Carolina license examination to qualify for a North Carolina license.

Like the licensing agencies of several other states that have moved from a reciprocity approach in recent years to the "limited license recognition" approach described above, the Commission determined that this approach would better protect the interests of North Carolina consumers. Consequently, the Commission obtained from the 2011 General Assembly the authority to adopt a new system of licensing persons based on their licensure in another jurisdiction and adopted rules to implement the sys-

tem described in this article. Additionally, the Commission decided to change its license examination from a one-part examination to a two-part examination, also effective March 1, 2012, in part to facilitate this change in licensing standards for applicants licensed in other jurisdictions. [See the article on "License Examination Changes" on page 1 of this *Bulletin*.]

Effect on Current Reciprocal Licensees

North Carolina licensees who obtained their licenses by reciprocity may retain those licenses indefinitely by keeping the North Carolina license current (i.e., properly renewed each year) and meeting the continuing education requirement (waived if the licensee maintains an active license in the reciprocal state). However, if such a licensee allows his/her license to expire for more than six months or the license is suspended, revoked or surrendered, the former reciprocal licensee must satisfy the new requirements in order to reinstate such license.

If you currently hold a North Carolina license issued by reciprocity, you may retain that license indefinitely by properly renewing the license each year and remaining on "active" status in your resident state.

Applicants for a North Carolina License under a Current Reciprocal Arrangement

Persons wanting to apply for a North Carolina license under a current reciprocal licensing arrangement must file a *100% complete and correct application that is received in the Commission office not later than February 29, 2012*. NO EXCEPTIONS can be made! Interested persons are strongly encouraged to file their application at the earliest possible date, preferably by February 15.

North Carolina Licensee Applying for a Reciprocal License in Another State

No currently reciprocal state has advised the Commission that it will terminate reciprocal licensing prior to February 29, 2012; however, these states are

not bound to continue reciprocal licensing until that date. A North Carolina resident licensee who wants to obtain a license in another state under a current reciprocal licensing arrangement should *immediately contact the appropriate state licensing agency and comply with its requirements*. The licensing agency telephone numbers for the currently reciprocal states are shown below.

Arkansas Real Estate Commission
(501) 683-8020

Connecticut Department of Consumer
Protection
Trade Practices Division
(860) 713-6150

Georgia Real Estate Commission
(404) 656-3916

Iowa Real Estate Commission
(515) 281-7393

Louisiana Real Estate Commission
(225) 925-1923

Mississippi Real Estate Commission
(601) 932-6770

Nebraska Real Estate Commission
(402) 471-2004

South Carolina Department of Labor,
Licensing & Regulation*
Real Estate Commission
(803) 896-4400

Tennessee Real Estate Commission
(615) 741-2273

West Virginia Real Estate Commission
(304) 558-3555

***NOTE:** The South Carolina Real Estate Commission has advised that, beginning March 1, 2012, it will require North Carolina licensees to take the appropriate South Carolina "state" license examination section.

Limited Activities Available To Unaffiliated Brokers

What activities can a full broker engage in if the broker leaves a brokerage firm office and chooses to work alone from home without being designated as a broker-in-charge? The short answer is: *very few*. Assuming the license is *active*, permissible activities are limited primarily to:

- receiving referral fees from another broker or brokerage company,
- selling, buying or leasing property for himself or herself,
- representing someone as a buyer or tenant broker *so long as* the broker did not actively solicit the business. This most often occurs when the buyer/tenant is a relative or friend.

Pursuant to Commission Rule A.0110(a), a broker who chooses to function as a *sole proprietor*, but wishes to avoid acting as a broker-in-charge cannot:

- solicit business, advertise or otherwise promote his/her services,
- list properties (which inherently requires promotion),
- have other licensees affiliated with the broker's sole proprietorship,
- be responsible for holding any monies that must be deposited into a trust account.

Note that *only sole proprietorships qualify for this exemption*: a broker who chooses to receive income from referrals through his or her one-person licensed limited liability company or corporation must still have a broker-in-charge.

A broker-in-charge or affiliated **full** broker who leaves a firm to set up a sole proprietorship, for example by working from home in his or her own name, should notify the Commission in writing upon the severance of the affiliation. Such a broker may remain on active status at his or her home address without a broker-in-charge so long as the broker timely renews his or her license prior to June 30 and completes 8 hours of continuing education (including the mandatory *Update* course) by June 10 each year. On the other hand, provisional brokers

must always have a broker-in-charge in order to be on active status — timely license renewal and continuing education is not sufficient so long as the license remains provisional. This means that a provisional broker cannot work from home as a sole proprietor.

Consider the following scenarios for an **unaffiliated full broker with an active license** but no broker-in-charge:

A) The broker is asked by her sister to list her sister's house for sale. Typically, brokers find it necessary to advertise whenever they represent a property owner, in order to attract a buyer or tenant. As a listing agent, the broker also may be called upon to hold any earnest money deposit. Thus, to take this listing, the broker must do any one of the following:

- declare herself broker-in-charge of her sole proprietorship; or
- create an entity, obtain a firm license and be broker-in-charge of her entity; or
- refer the listing to another company and receive a referral fee; or
- affiliate with a company/office if the broker wished to actively participate as an agent in the transaction.

B) The broker wants to represent herself in purchasing property and receive a portion of the commission. In this case, the broker does *not* need to have an active license to request and receive consideration because she is a party in the transaction (in this case, the buyer). As a party in the transaction, the buyer/broker is not engaged in brokerage, because she is not representing others. As such, she does not need a license to be paid. It is up to the listing company to decide whether it will share compensation with this buyer.

A common activity of brokers on active status who are not affiliated with an office and who choose not to declare themselves broker-in-charge is to refer parties to other licensees in exchange for a referral fee. As always, the broker making the referral must disclose to the prospect that the broker will earn a fee

for the referral. It is recommended when negotiating referral fees that brokers put the terms of the referral agreement in writing. And, if the broker **promotes** his or her services as a referral agent by handing out business cards or maintaining a website soliciting consumers, then he or she must be a broker-in-charge.

On rare occasions, an unaffiliated non-BIC on active status acting as a sole proprietor may also act as a buyer agent. This is permissible *IF* the buyer client was not solicited in any way by the broker, and the broker does not handle any trust money in the transaction. Typically, the buyer will be a family member or friend who knows the broker has a license and who initiates contact with the broker. In this case, the broker is rendering brokerage services and must comply with all Real Estate License Law and Commission rules including maintaining transaction files, making appropriate agency disclosure and having a written agency agreement.

Practicing as a sole proprietor can sometimes be a challenge. But, a full broker (whose license is not provisional) does not have to affiliate with another broker to maintain his or her license on active status. The broker must simply timely renew the license and complete eight hours of CE each year (the *Update* course and an elective). So long as the broker remains a sole proprietor, the broker may engage only in the limited activity outlined above without being a broker-in-charge. Understand as well that this limited exception only applies to sole proprietorships, and not to any entity.



Many Steps Required for Handling Trust Money in an Electronic Age

(The following article is reprinted from the Real Estate Bulletin, official publication of the California Department of Real Estate. Statute citations have been changed to the comparable North Carolina law.)

More and more real estate brokers are taking advantage of the electronic disbursement options made available to them from their bank or other financial institution. These options are available for the trust accounts used by a broker. If done properly, trust money can be paid out from a trust account via electronic disbursements. Not only must a broker comply with the Real Estate License Law including G.S. 93A-6 and the Commission rules including Rule A.0107, but it is important that the broker know that there are many **caveats and steps that need to be taken** in order to assure that there is proper authorization, documentation, and protection for electronic disbursements.

An electronic disbursement includes such processes as wire transfers and electronic funds transfers (EFT's). A wire transfer is an individual transaction set up between one entity and another, typically with funds transferred from one bank account to another. Wire transfers may be more costly and are usually used for large transactions.

An EFT is a transfer of funds initiated through an electronic terminal, telephone, computer, or other means authorizing a financial institution to debit or credit an account. An EFT is often a very cost effective means of distributing funds. In the United States, the Automated Clearing House (ACH) is the primary means through which EFT's take place.

Who Can Disburse Funds Electronically?

The requirements of Commission Rules A.0107 and A.0110 apply whether a disbursement is made using a paper check or electronically. Disbursements should be made from a trust account under the supervision of the broker-in-charge.

Policy and Procedures

Long-established internal control practices, such as written policies and procedures, authorizations, segregation of duties, and monitoring are **vital** important in the electronic disbursement process. Supervisory oversight is especially critical to assure that trust money is not embezzled and is accounted for properly.

Before you begin making electronic disbursements, it is advisable to create detailed policies and procedures to spell out:

- who is authorized to initiate electronic disbursements;
- how electronic disbursements will be approved by the broker-in-charge;
- who will send electronic disbursements if they are not automated; and
- who will account for these transactions and reconcile accounting documentation related to electronic transactions (of course the requirements of Commission Rule A.107, .0108 and .0110 apply).

In order to establish a recurring bill payment from the trust account on behalf of a client (e.g., mortgage payment), policies should be in place that include, but are not limited to, obtaining authorization from the client, direction of the broker-in-charge for initiating the process, and an approval process that will prevent incurring negative balances.

Proper segregation of duties is especially critical for electronic transactions. Proper segregation of duties reduces the chance that one person could be in a position both to commit a wrongdoing and to conceal it. At least two individuals should be involved in an electronic distribution. If possible, the authorization and transmitting functions should be separated and the recording function should also be assigned to someone who does not have either approval or transmitting duties.

For non-recurring bill payment, access to the electronic disbursement

function should be controlled and its use should be authorized and actively monitored due to the ease with which transfers can be made. Safeguards for initiating an EFT or wire transfer could include, but are not limited to:

- having a callback provision in your electronic or wire instructions that requires the bank to call someone other than the person initiating the transaction;
- using a restricted password to authorize the bank to make a transfer;
- hand delivering a letter of authorization to the bank with the transfer instructions; and
- having a policy with the bank that limits recipients of wire transfers.

Failure to establish controls could result in a trust account shortage.

Brokers should also be aware that, depending on the transaction flow, the use of a third part service intermediary provider may not meet the broker-in-charge's trust money handling requirements.

If done properly, electronic disbursements can be a time and money-saving process, but the process requires strong supervisory oversight, controls and record keeping. It can be a nightmare for a broker, ripe with danger of substantial loss of funds and/or loss of accounting controls, if the broker is not fully involved and does not have policies in place.



Miller

(Continued from page 1)

College in 1978 and received his law degree from the University of North Carolina at Chapel Hill in 1981.

During his three decades with the Commission, Miller has overseen the Commission's Legal Division in the investigation and prosecution of complaints against licensees, time share developers, and individuals and firms conducting real estate brokerage without

first being properly licensed. He drafted the legislation that ultimately became the Vacation Rental Act.

Miller has been active in the Association of Real Estate License Law Officials (ARELLO), where he served multiple terms as the chair of both the Law Committee and the Commission Member Resource Committee. He was instrumental in the creation of Commissioner College, an educational program that teaches new board or commission members about their duties, respon-

sibilities, and liabilities. He also wrote Simple Rules of Procedure for Occupational Licensing Boards, a publication offered by ARELLO that has now been officially adopted by several member jurisdictions.

The Commission congratulates Mr. Miller on the completion of his long and distinguished service to real estate consumers, practitioners, and the citizens of North Carolina and wishes him and his wife, Kim, much happiness in his well-deserved retirement.

Changes to Rules

(Continued from page 1)

Examination and Licensing

- Requires license applicants to pass an examination consisting of a national section and a North Carolina section and provides modified procedures for scheduling and taking the two-part examination.
- Eliminates examination review by failing applicants.
- Provides new procedures for licensing persons licensed in another jurisdiction after licensing by reciprocity is discontinued effective February 29, 2012.

Postlicensing Education

- Provides that when a provisional

broker fails to complete required post-licensing education within three years of initial licensure, the broker's license will be placed on inactive status rather than canceled.

- Provides educational requirements that a provisional broker whose license is on inactive status for failing to timely complete required post-licensing education must meet to reactivate his or her license.
- Clarifies the Commission's authority to extend the time for completing post-licensing courses by reason of hardship.

Schools and Instructors

- Prohibits real estate schools and sponsors from using a van or other motor vehicle as a classroom and re-

quires that classroom facilities comply with health, safety, and welfare requirements and are equipped for electronic visual presentations.

- Provides that an individual applying for approval as a prelicensing and postlicensing instructor may be granted only one six-month grace period to attend the Commission's New Instructor Seminar and satisfactorily demonstrate his or her teaching skills on a video recording.
- Prescribes requirements for reinstatement of an expired instructor approval to teach the Real Estate Update continuing education course. Please see the Commission's Web site for the actual language of each rule.

Know That Your Locksmith Is Licensed

Locks play an important part in your real estate business. Leave one unlocked or needing repair so that it can lock and you could, pun intended, open the door to a lot of trouble.

To be certain that locks play a positive role in your business, secure the services of a licensed locksmith.

Since 2001, North Carolina has required that all locksmiths be licensed through written examination and background investigation. Every license renewal includes a criminal background check and requires the completion of 24 hours of continuing

education.

In recent years, scam locksmith operations have emerged; appearing legitimate in the local phone directory and on the Internet, they are not in practice. When closing on a property, provide a list of licensed locksmiths for your client and recommend that the locks be changed. When managing a listing or rental property, report any problems with locks to the owners as soon as they are discovered.

For more information on locksmiths, visit the North Carolina Locksmith Board at www.nclocksmithboard.org.



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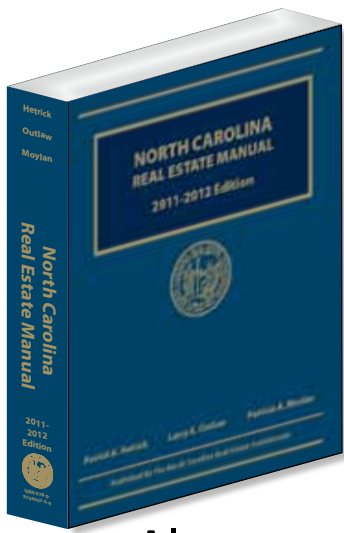
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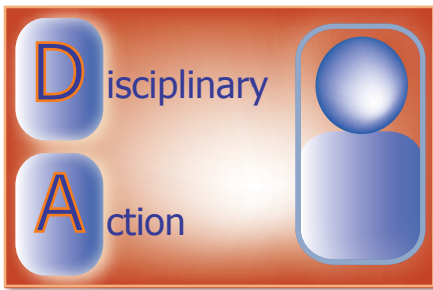
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Penalties for violations of the Real Estate License Law and Commission rules vary depending upon the particular facts and circumstances present in each case. Due to space limitations in the Bulletin, a complete description of such facts cannot be reported in the following Disciplinary Action summaries.

ADVANTAGE TRAINING SYSTEMS, INC. (Horse Shoe) - The Commission accepted the permanent voluntary surrender of the sponsor approval of Advantage Training Systems effective December 31, 2011. The Commission dismissed without prejudice allegations that Advantage Training Systems violated provisions of the Real Estate License Law and Commission rules. Advantage Training Systems neither admitted nor denied misconduct.

EDWARD B. ANDERSON (Marion) – By Consent, the Commission suspended the broker license of Mr. Anderson for a period of two years effective April 1, 2011. Six months of the suspension were active with the remainder stayed for a probationary period of three years. The Commission found that Mr. Anderson, also licensed by the North Carolina Appraisal Board, consented to a three-year suspension of his appraiser certificate effective February 1, 2010, with one year active on certain conditions, in connection with several appraisals he performed involving vacant lots.

JAMES M. BEATY (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Beaty for a period of two years effective December 1, 2011. The Commission then stayed the suspension for a probationary period of two years subject to certain conditions. The Commission found that Mr. Beaty, on March 31 and April 1, 2011, in two separate cases, pled guilty to and was convicted of *Driving While Impaired, Level 2*, in Mecklenburg County and, in both cases, given suspended sentences with probation and ordered to obtain substance abuse assessment, attend AA meetings, and pay fines and court costs. The Commission also found that Mr. Beaty was convicted of *Driving While*

Impaired on two prior occasions in July, 1993 and June, 2007.

CASEY REID BRAWLEY (Charlotte) – The Commission accepted the voluntary surrender of the broker license of Mr. Brawley for a period of five years effective January 11, 2012. The Commission dis-



missed without prejudice allegations that Mr. Brawley violated provisions of the Real Estate License Law and Commission rules. Mr. Brawley neither admitted nor denied misconduct.

HEATHER LYNNE BROOKS (Greensboro) – By Consent, the Commission suspended the broker license of Ms. Brooks for one year effective January 1, 2012. The Commission found that Ms. Brooks accepted receipt of earnest money totaling \$1,000; instead of depositing the money in her trust account as required, she deposited it into her operating account. The Commission also found that within three days of receipt, Ms. Brooks spent a portion of the earnest money deposit; it took her approximately one year to refund the earnest money deposit from her personal funds.

THURSDAY BROWN-RICE (Summerfield) – By Consent, the Commission reprimanded Ms. Brown-Rice effective September 1, 2011. The Commission found that Ms. Brown-Rice agreed to become broker-in-charge for a licensed firm, but took no part in supervising the licensed firm and instead allowed the qualifying broker to operate the firm.

PATRICIA N. CLARK (Lewiston Woodville) – By Consent, the Commission revoked the broker license of Ms. Clark effective November 16, 2011. The Commission found that Ms. Clark, acting as broker-in-charge of her sole proprietorship, failed to maintain and retain her trust account records in compliance with the Real Estate License Law and Commission rules and failed to safeguard the funds she collected on behalf of others, and her liabilities sometimes exceeded the funds on hand in her account.

CLC REALTY, INC. (Gastonia) – By Consent, the Commission suspended the firm license of CLC Realty for a period of 12 months effective November 1, 2011. The Commission then stayed the suspension for a probationary period of 24 months effective November 1, 2011, subject to certain conditions. The Commission found that CLC Realty failed to keep complete records of trust account funds and that the records did not provide a clear audit trail. The Commission also found that CLC Realty failed to reconcile its trust account records to the records provided by the bank. The Commission noted that CLC Realty has since accurately reconstructed its trust account records from available sources to conform to Commission rules and has identified ownership of all funds deposited into the trust account. (See **Disciplinary**, page 13)

Disciplinary Action

(Continued from page 12)

NORRIS V. CLIFTON (Sugar Mountain) – The Commission accepted the voluntary surrender of the broker license of Mr. Clifton for a period of one year effective December 1, 2011. The Commission dismissed without prejudice allegations that Mr. Clifton had violated provisions of the Real Estate License Law and Commission rules. Mr. Clifton neither admitted nor denied misconduct.

BERNARD CRIPE (Raleigh) – By Consent, the Commission reprimanded Mr. Cripe effective December 1, 2011. The Commission found that Mr. Cripe, acting as broker-in-charge of a real estate brokerage firm, sold lots and houses in a subdivision with private streets and but failed to provide purchasers with the subdivision street disclosure statement required by law.

HEIDI JEANETTE EBBERT (Charlotte) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Ebbert effective November 16, 2011. The Commission dismissed without prejudice allegations that Ms. Ebbert had violated provisions of the Real Estate License Law and Commission rules. Ms. Ebbert neither admitted nor denied misconduct.

FRANCIS A. FIEDOR (Raleigh) – By Consent, the Commission reprimanded Ms. Fiedor effective December 1, 2011. The Commission found that Ms. Fiedor sold lots and houses in a subdivision with private streets and failed to provide purchasers with the subdivision street disclosure statement required by law.

GRANDFATHER GOLF & COUNTRY CLUB, INC. (Linville) – By Consent, the Commission reprimanded Grandfather Golf & Country Club effective November 16, 2011. The Commission found that Grandfather Golf & Country Club, acting as broker and agent for nine to 20 residential rental properties, procured tenants and collected rents and deposit monies for landlord clients without a broker-in-charge and without a license on active status.

CAROLYN W. GRANT (Raleigh) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Grant effective November 1, 2011. The Commission dismissed without prejudice allegations that Ms. Grant had violated provisions of the Real Estate License Law and Commission rules. Ms. Grant denied misconduct.

CATHERINE M. GREER (Asheville) – The Commission accepted the permanent voluntary surrender of the broker license and instructor approval of Ms. Greer effective December 31, 2011. The Commission

Licensees Must Report Convictions

Commission Rule A.013 requires any licensee who is convicted of a misdemeanor or felony or who has disciplinary action taken against him or her by any occupational licensing board to file a report with the Real Estate Commission.

The reporting requirement includes convictions for driving while impaired (“DWI”). The report must be filed within sixty (60) days of the final judgment or board action.

If you have questions about this rule, please call the Commission’s Legal Division at 919-875-3700 for more information.

dismissed without prejudice allegations that Ms. Greer violated provisions of the Real Estate License Law and Commission rules. Ms. Greer neither admitted nor denied misconduct.

GUERRA, INC. (Raleigh) – The Commission accepted the permanent voluntary surrender of the firm license of Guerra, Inc., effective December 15, 2011. The Commission dismissed without prejudice allegations that Guerra, Inc., had violated provisions of the Real Estate License Law and Commission rules. Guerra, Inc., neither admitted nor denied misconduct.

NUVIA GUERRA (Raleigh) – The Commission accepted the permanent voluntary surrender of the broker license of Ms. Guerra effective December 15, 2011. The Commission dismissed without prejudice allegations that Ms. Guerra had violated provisions of the Real Estate License Law and Commission rules. Ms. Guerra neither admitted nor denied misconduct.

DALE A. HAMLIN (Hendersonville) – By Consent, the Commission suspended the broker license of Mr. Hamlin for a period of three years effective February 1, 2012. Six months of the suspension are active with the remainder stayed for a probationary period of 30 months. The Commission found that Mr. Hamlin in 2005 failed to disclose 6% referral fees paid to him by a builder to whom he referred six buyers.

JUAN M. JACKSON (Raleigh) – The Commission accepted the permanent voluntary surrender of the broker license of Mr. Jackson effective December 1, 2011. The Commission dismissed without prejudice allegations that Mr. Jackson violated provisions of the Real Estate License Law and Commission rules. Mr. Jackson neither admitted nor denied misconduct.

ALLEN C. JOHNSON (Little River, South Carolina) – By Consent, the Commission revoked the broker license of Mr. Johnson effective December 1, 2011. The Commission found that Mr. Johnson accepted loans totaling \$165,000 from certain individuals to purchase foreclosed residential properties, make improvements to them, resell them, and then repay the loans according to signed promissory notes, but Mr. Johnson failed to repay the loans and thus breached his contractual obligation.

CYNTHIA L. KUSCHE (Oak Ridge) – By Consent, the Commission suspended the broker license of Ms. Kusche for a period of one year effective September 1, 2011. Two months of the suspension were active with the remainder stayed for a probationary period ending September 1, 2012. The Commission found that Ms. Kusche, as qualifying broker and broker-in-charge of (See **Disciplinary**, page 14)

Disciplinary Action

(Continued from page 13)

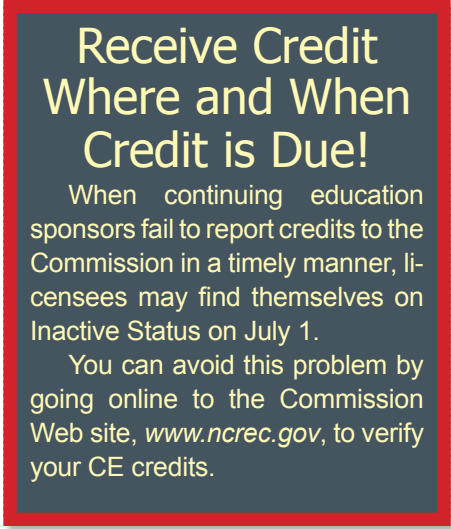
a real estate brokerage firm, failed to maintain her trust account in accordance with Commission rules and failed to place all rents in a designated trust account, failed to provide a journal to the Commission after agreeing to do so, failed to have all information on deposit tickets, and engaged in deficit spending. The Commission noted that Ms. Kushce no longer performs property management and no longer holds trust monies.

GEOFFREY LOWEL LAMB (Concord) – The Commission actively suspended Mr. Lamb's broker license effective January 1, 2012 for a period of 18 months, through and including June 30, 2013, followed by a probationary period of three years through and including June 30, 2016. The Commission found that Mr. Lamb made false representations calculated to deceive and mislead consumers into paying money to Mr. Lamb for loan modification and foreclosure relief services in violation of state law. The Commission also found that Mr. Lamb advertised experience in short sales in excess of the period of time during which he could lawfully practice real estate brokerage.

LANDO REALTY, INC. (Charlotte) – By Consent, the Commission suspended the firm license of Lando Realty for a period of one year effective December 1, 2011. The Commission then stayed the suspension for a probationary period of one year. The Commission found that Lando Realty failed to ensure all agency agreements were reduced to writing and failed to maintain its trust accounts in accordance with Commission rules. The Commission also found that Lando Realty failed to maintain journals or ledgers, failed to reconcile accounts monthly, and maintained personal funds over the maximum allowed. The Commission finally found that Lando Realty did not accurately disburse maintenance fees and developed a significant overage of \$13,000.

JO-ANN C. LAVECCHIA (Gastonia) – By Consent, the Commission suspended the broker license of Ms. Lavecchia for a

period of 12 months effective November 1, 2011. The Commission then stayed the suspension for a probationary period of 12 months beginning November 1, 2011, subject to certain conditions. The Commission found that Ms. Lavecchia, acting as broker-in-charge of a real estate brokerage firm between 1991 and 2003, failed to keep complete records of trust account funds and that the records did not provide a clear audit trail. The Commission also found that Ms. Lavecchia failed to reconcile trust account records to the



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records provided by the bank. The Commission noted that Ms. Lavecchia has since accurately reconstructed trust account records from available sources to conform to Commission rules and has identified ownership of all funds deposited into the trust account.

SCOTT L. LEREW (Wake Forest) – By Consent, the Commission reprimanded Mr. Lerew effective December 1, 2011. The Commission found that, during 2005-2008, Mr. Lerew listed and sold lots and houses in a subdivision with private streets and failed to provide purchasers with the subdivision street disclosure statement required by law. The Commission noted that the North Carolina Department of Transportation subsequently took over maintenance of the subdivision streets.

GEORGE K. LWIN (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Lwin for a period of one year effective December 1, 2011. The

Commission then stayed the suspension for a probationary period of one year. The Commission found that Mr. Lwin failed to ensure all agency agreements were reduced to writing and failed to maintain his firm's trust accounts in accordance with Commission rule. The Commission also found that Mr. Lwin failed to maintain journals or ledgers, failed to reconcile accounts monthly, and maintained personal funds over the maximum allowed. The Commission finally found that Mr. Lwin did not accurately disburse maintenance fees and developed a significant overage of \$13,000.

SALLY J. MASS (Franklin) – By Consent, the Commission suspended the broker license of Ms. Mass for a period of 36 months effective February 1, 2011. One year of the suspension was active with the remainder stayed for a probationary period of 24 months commencing February 1, 2012. The Commission found that Ms. Mass listed and sold lots in a subdivision developed by an entity owned and controlled by Ms. Mass and failed to provide purchasers with the disclosure required by law that the streets were privately owned, failed to fulfill promises to purchasers that the streets would be paved, failed to follow the approved subdivision plan, and violated sedimentation and erosion control regulations. The Commission also found that Ms. Mass used a credit card belonging to the firm for personal expenses without authority.

MARGARET M. MCPHAIL (Raleigh) – By Consent, the Commission reprimanded Ms. McPhail effective February 1, 2012. The Commission found that Ms. McPhail in 2006 purchased a residential property for which a former client provided approximately \$11,145 for a down payment and closing costs; she closed on the property in her name only; and the former client resided in the property and made mortgage payments although the former client believed his name was supposed to be on the deed as well. The Commission also found that Ms. McPhail purported to have entered into a lease/purchase agreement with the former client but could not produce any written agreement to that effect. (See **Disciplinary**, page 15)

Disciplinary Action

(Continued from page 14)

fect. The Commission finally found that Ms. McPhail eventually evicted the former client/tenant from the property for failure to pay rent or purchase the house from her.

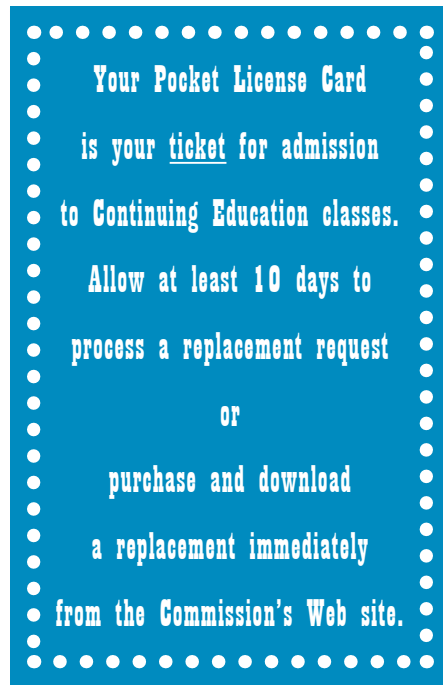
JOHN KEVIN NEDLEY (Winabow) – By Consent, the Commission suspended the broker license of Mr. Nedley for a period of six months effective January 2, 2010. The Commission then stayed the suspension for a probationary period of six months. The Commission found that Mr. Nedley sold his personal residence representing that it had 1,711 square feet of heated living area and attic space finished as a fourth bedroom, but failed to obtain a permit for the finishing of the attic space and the alteration was not done to applicable building codes. The Commission also found that the buyer discovered this only after realizing that the tax records showed only 1,379 square feet of living area and that an estimate obtained by the buyer suggests it would cost approximately \$6,600 to bring the property to code.

DIANE W. PACE (Cary) – By Consent, the Commission suspended the broker license of Ms. Pace for a period of five years effective April 1, 2011. The Commission found that Ms. Pace was convicted in 2010 in U.S. District Court of one count of Conspiracy to Commit Mail Fraud, six counts of Mail Fraud and Aiding and Abetting, and one count of conspiracy to Commit Money Laundering. The Commission also found that Ms. Pace was sentenced to six months of house arrest without electronic monitoring, placed on probation for a term of four years per count, to run concurrently, and ordered to perform 200 hours of community service and to pay restitution.

OMEGA PROPERTY GROUP, INC. (Raleigh) - The Commission accepted the permanent voluntary surrender of the firm license of Omega Property Group effective November 1, 2011. The Commission dismissed without prejudice allegations that Omega Property Group had violated provisions of the Real Estate License Law

and Commission rules. Omega Property Group denied misconduct.

NICKY S. O. RAMPHIR (Cornelius) – By Consent, the Commission suspended the broker license of Mr. Ramphir for a period of six months effective December 1, 2011. The Commission found that Mr. Ramphir sold a renovated property for which he had contracted with an unlicensed individual to install a new HVAC system; the system failed shortly after clos-



ing and was not covered by the home warranty sold with the property because its installation was unpermitted. The Commission noted that the buyers of the home still have an unpermitted HVAC unit, but that it does function as intended.

AMY JO RAWSON (Charlotte) – By Consent, the Commission reprimanded Ms. Rawson effective December 1, 2011. The Commission found that during 2010 the North Carolina Appraisal Board suspended the certification of Ms. Rawson, a certified appraiser and licensed real estate broker, for making an incorrect representation in an appraisal in violation of the Uniform Standards of Professional Appraisal Practice.

TERRY L. ROBERTS (Lewisville) – By Consent, the Commission revoked

the broker license of Mr. Roberts effective November 16, 2011. The Commission found that Mr. Roberts became broker-in-charge of a company which he converted to an LLC but failed to apply for a firm license with the Commission. The Commission also found that Mr. Roberts placed security deposits, rental proceeds and other trust monies into a bank account undesignated as a trust escrow account, failed to maintain ledger sheets in compliance with Commission rules, and failed to reconcile his accounts or perform monthly trial balances. The Commission finally found that the trust accounts had overages and shortages due to multiple violations of Commission rules as to trust accounting.

ERVIN D. SKEEN (High Point) – By Consent, the Commission suspended the broker license of Mr. Skeen for a period of three years effective November 1, 2011. One month of the suspension was active with the remainder stayed for a probationary period of thirty-six months beginning December 1, 2011 and ending November 30, 2014. The Commission found that Mr. Skeen, acting as owner and broker-in-charge of a real estate brokerage firm, failed to supervise an individual to whom he gave dominion and control of trust accounts and who converted money belonging to the firm's clients and tenants to personal use. The Commission also found that Mr. Skeen failed to properly maintain trust account books and records as he was required to do as broker-in-charge and failed to safeguard and account for the funds of others in his custody.

THE SKEEN GROUP, INC. (High Point) – By Consent, the Commission suspended the firm license of The Skeen Group for a period of three years effective December 1, 2011. The Commission then stayed the suspension for a probationary period of thirty-six months beginning December 1, 2011 and ending November 30, 2014. The Commission found that The Skeen Group, a real estate brokerage firm, failed to supervise an individual who had been given dominion and control of trust accounts and who converted money belonging to the firm's clients and tenants to (See **Disciplinary**, page 16)

Disciplinary Action

(Continued from page 15)

personal use. The Commission also found that The Skeen Group failed to safeguard and account for the funds of others in its custody.

SHIRLEY S. TRUELL (Winston-Salem) – By Consent, the Commission revoked the broker license of Ms. Truell effective January 11, 2012. The Commission found that Ms. Truell, acting as broker-in-charge of a real estate brokerage firm, failed to maintain the trust account records of the firm in accordance with the Real Estate License Law and Commission rules and failed to reconcile the trust accounts on a monthly basis. The Commission also found that liabilities of Ms. Truell's trust accounts exceeded the funds on hand by \$112,000 and that the trust accounts have since been fully funded.

KIRK W. WAGENSELLER, III (Charlotte) – By Consent, the Commission suspended the broker license of Mr. Wagenseller for a period of 48 months effective January 1, 2011. One year of the suspension was active with the remainder stayed for a probationary period of three years. The Commission found that Mr. Wagenseller, acting as broker for the owners of a condominium unit, procured purchasers who desired to lease it for a time before closing and, although aware that tenant occupancy required permission from the homeowner's association, leased it without the required permission. The Commission also found that Mr. Wagenseller, in order to reduce the amount of fines imposed for leasing the unit, provided the homeowner's association with a copy of a deed conveying the unit which had been altered to make it appear that the deed had been recorded in June 2009 when, in fact, it was recorded in August 2009. Finally, the Commission found that Mr. Wagenseller, during a meeting of the homeowners' association and before witnesses residing at the condominium complex, shouted coarse remarks directed at the president of the association.

KAYE C. WALLER (Gastonia) – By Consent, the Commission suspended the

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broker license of Ms. Waller for a period of 12 months effective November 1, 2011. The Commission then stayed the suspension for a probationary period of 12 months beginning November 1, 2011. The Commission found that Ms. Waller, acting as broker-in-charge of a real estate brokerage firm between 2003 and 2010, failed to keep complete records of trust account funds and that the records did not provide a clear audit trail. The Commission also found that Ms. Waller failed to reconcile trust account records to the records provided by the bank. The Commission noted that Ms. Waller has since accurately reconstructed trust account records from available sources to conform to Commission rules and has identified ownership of all funds deposited into the trust account.

TERRI PEARSON WILLIAMS (Wilmington) – By Consent, the Commission reprimanded Ms. Williams effective December 1, 2011. The Commission found that Ms. Williams, acting as manager of a homeowner's association, collected dues money from homeowners but

did not deposit the money in an escrow account within three banking days following its receipt. The Commission also found that Ms. Williams did not account for the money to the homeowner association accurately within 90 days of its receipt and allowed payments from the owners to accumulate for months before attempting to make any disposition of the money.

